

that the public benefit anticipated as a result of adopting the proposed amendment to rule §47.17 will be to ensure that TRS administers the TRS retirement plan in accordance with the latest actuarial assumptions adopted by the Board. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amendment to rule §47.17. To the extent the newly incorporated actuarial tables increase the reduction of the amount of a distribution payable to an alternate payee under the proposed amended rules, this reduction results from TRS's obligation to comply with Government Code §804.005 that requires that a distribution made pursuant to that section be the actuarial equivalent of the accrued retirement benefit of the member of the retirement system.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendment to rule §47.17. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amendment to rule §47.17. Therefore, no local employment impact statement is required under Government Code §2001.022 and §2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amendment to rule §47.17 will be in effect the proposed amendment will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amendment to rule §47.17, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amendment to rule §47.17 because the proposed amendment does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

STATUTORY AUTHORITY

The amendment to rule §47.17 is proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system,

and the transaction of business of the board, and Government Code §804.005, which requires that a distribution made pursuant to that section be the actuarial equivalent of the accrued retirement benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election.

CROSS-REFERENCE TO STATUTE

The proposed amendment to rule §47.11 implements Chapter 804, Subchapter A, Texas Government Code, concerning Qualified Domestic Relations Orders.

§47.17. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins.

(a) - (g) (No change.)

(h) TRS will use Tables for Life Annuity Factors, Interest Annuity Factors, and Interest Accumulation Factors furnished by the TRS actuary of record.

Figure: 34 TAC §47.17(h)

[Figure: 34 TAC §47.17(h)]

(i) - (z) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 3, 2019.

TRD-201901630

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 542-6438

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, pertaining to the repeal of occupational therapy facility registration.

The amendment is proposed to revise the definition of "Investigation Committee" to remove the facilities reference therein in accordance with changes in statute to the OT Practice Act pursuant to SB 317, which repeals requirements concerning the registration of occupational therapy facilities.

Other proposed rule changes regarding facility registration have been submitted to the *Texas Register* for publication, including the proposed repeal of Chapter 376, concerning registration of facilities; and proposed amendments to §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the change does not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendment would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendment.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendment's impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand an existing regulation; would repeal an existing regulation by removing language concerning facilities from the definition of Investigation Committee; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because the rule does not impose a cost, and it does not increase costs to regulated persons, and because it is necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite

2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendment is published in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) **Accredited Educational Program**--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) **Act**--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) **AOTA**--American Occupational Therapy Association.

(4) **Applicant**--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) **Board**--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) **Certified Occupational Therapy Assistant (COTA®)**--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) **Class A Misdemeanor**--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) **Client**--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) **Complete Application**--Application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) **Complete Renewal**--Contains renewal fee, renewal form with continuing education submission form, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) Continuing Education Committee--Reviews and makes recommendations to the Board concerning continuing education requirements and special consideration requests.

(12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(13) Endorsement--The process by which the Board issues a license to a person currently licensed in another state or territory of the United States that maintains professional standards considered by the Board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in §454.207 of the Practice Act (relating to License Examination). The current Examination is the initial certification examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(19) Investigation Committee--Reviews and makes recommendations to the Board concerning complaints and disciplinary actions regarding licensees [and facilities].

(20) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board.

(21) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. This test is an open book, online examination with multiple choice and/or true-false questions. The passing score is at least 70%.

(22) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(23) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(24) NBCOT--National Board for Certification in Occupational Therapy.

(25) Non-Licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board who provides support services to occupational therapy practitioners and whose activities require on-the-job training and supervision.

(26) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do not require the routine intervention of a physician.

(27) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occupation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(28) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(29) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(30) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(31) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(32) Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

(33) Occupational Therapy Practitioners--Occupational Therapists and Occupational Therapy Assistants licensed by this Board.

(34) Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(35) Place(s) of Business--Any facility in which a licensee practices.

(36) Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from this Board may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

(37) Rules--Refers to the TBOTE Rules.

(38) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(39) Telehealth--A mode of service delivery for the provision of occupational therapy services delivered by an occupational

therapy practitioner to a client at a different physical location using telecommunications or information technology. Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telecare, telerehabilitation, and e-health services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 31, 2019.

TRD-201901614

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: July 14, 2019

For further information, please call: (512) 305-6900



CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §367.1, concerning continuing education, §367.2, concerning categories of education, and §367.3, concerning continuing education audit. The amendments are proposed to revise continuing education (CE) requirements including to change the number of continuing education hours required for renewal, to remove certain courses from the list of unacceptable activities, to add a provision concerning under what circumstances a licensee may count continuing education hours earned outside of the renewal cycle toward the required continuing education, to revise requirements concerning pre-approved continuing education, to expand the categories of continuing education and make changes therein, to revise a provision concerning requests for special consideration for continuing education, and to clarify and cleanup provisions in the sections.

Changes to §367.1 include reducing the number of required continuing education hours per renewal period from thirty to twenty-four hours and to include language that unless otherwise specified in the chapter, one hour of continuing education is equal to one contact hour. A provision is also being proposed to the section to add that licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period. Additional changes to §367.1 include removing a number of courses from the list of activities not acceptable for continuing education. The proposed amendments also clarify that all continuing education activities that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board.

The amendments to the section include further cleanups, including removing a provision requiring that those renewing a license more than ninety days late must submit proof of continuing education for the renewal as §370.1, concerning license renewal, of the OT Rules, already contains a provision addressing the submission of CE documentation for late renewal.

Changes to §367.2 would revise the categories of continuing education and the requirements therein and include cleanups to the section to use the term "contact hours" consistently and to remove redundant language. Revisions to the categories of continuing education include amendments regarding the CE a licensee may earn for the supervision of fieldwork students. In addition, the category was expanded to allow a licensee to earn credit for the supervision of a student completing a supervised project for the accredited educational program and for the supervision of a student completing a re-entry course through an accredited college or university. The proposed amendments would also revise the continuing education credit a licensee may earn for the completion of NBCOT Navigator activities and would authorize continuing education credit for completion of the AOTA Benchmark. In addition, a provision concerning a request for special consideration for continuing education has been revised to add that such must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

Proposed changes to the section include further clarifications, cleanups, and revisions including the removal of language concerning §373.3 of the OT Rules, which concerned supervision of an occupational therapy assistant, as that section has been repealed from the OT Rules.

Changes to §367.3 concern cleanups and clarifications and add that documentation of continuing education includes letters of verification and that hours may be listed on continuing education documentation.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy as the proposed rules concern the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit and do not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit. There would be no anticipated economic cost to persons required to comply with the proposed rules.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rules concern the cleanup and reduction of occupational therapy regulations and the expansion of opportunities to earn continuing education credit and do not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new or expand an existing regulation; would repeal certain existing regulations by removing the requirement that occupational therapy practitioners complete thirty hours of continuing education each renewal period and replacing such with the requirement that they earn twenty-four hours each renewal period and by removing further restrictions regarding continuing education; would not increase or decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed amendments because the amendments do not impose a cost, and they do not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.

(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:

- (A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions),
- (B) health conditions treated by occupational therapy,
- (C) ethical or regulatory matters in occupational therapy, or

(D) occupational therapy documentation or reimbursement for occupational therapy services.

(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education [regardless of the provider or pre-approved status] include but are not limited to:

(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(B) Business meetings.

(C) Exhibit hall attendance.

(D) Reading journals.

(E) Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.

(F) Courses in topics concerning professionalism or customer service.

(G) Courses such as: [massage therapy; management and business administration;] social work;[;] defensive driving;[;] water safety;[;] team building;[;] leadership;[;] GRE, GMAT, MCAT preparation;[;] reading techniques;[;] general foreign languages;[;] communicable/infectious diseases; patient abuse;[;] disposal of hazardous waste;[;] patient privacy;[;] CPR;[;] First Aid;[;] HIPAA;[;] and FERPA;[;] blood-borne pathogens; or similar courses].

(b) Required Continuing Education Hours.

(1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.

(2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.

(3) Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

[(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license and must provide this information as requested.]

[(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.]

(c) [(d)] Each continuing education activity may be counted only one time in two renewal cycles.

(d) Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.

[(e) Educational activities that meet the criteria for continuing education as per this chapter that are approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board. Licensees are responsible for choosing CE that meets requirements as per this chapter, regardless of the activity's provider or pre-approved status. The Board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.]

(e) [(f)] Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

§367.2. Categories of Education.

Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.

(1) Formal academic courses from an occupational therapy program.

(A) Completion of course work at or through an accredited college or university shall be counted as follows: 3 contact [three CE] hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a 3 credit [three-credit] course counts for 9 contact hours [of continuing education], no maximum. Documentation [of this type of CE credit] shall include a transcript from the accredited college or university.

(B) Creation of a new course or courses at or through an accredited college or university may be counted for 10 contact hours maximum. Documentation [Proof of this type of CE] shall be a letter from the Program Director.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, internet-based courses, [and] conferences, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation [of this type of CE credit] shall include a certificate of completion or letter of verification.

(3) Development of publications, media materials, or grant/research [research/grant] activities. [per two year renewal period:] Documentation [of this type of CE credit] shall include a copy of the actual publication or media material(s) or a letter of verification documenting acceptance for publication or distribution, or title page and receipt of grant or research proposal.

(A) Published scholarly work in a peer-review journal.[;]

(i) Primary or second author, 15 contact hours maximum.

(ii) Other author, consultant, reviewer, or editor, 5 contact hours maximum.

(B) Grant or research proposals accepted for consideration.[;]

(i) Principal investigator or co-principal investigator, 10 contact hours maximum.

(ii) Consultant or reviewer, 4 contact hours maximum.

(C) Published book.[;]

(i) Primary author or book editor, 15 contact hours maximum.

(ii) Second or other author, 7 contact hours maximum.

(iii) Consultant or reviewer, 5 contact hours maximum.

(D) Published book chapter or monograph.[;]

(i) Primary author, 7 contact hours maximum.

(ii) Second or other author, consultant, reviewer, or editor, 2 contact hours maximum.

(E) Author, consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, 2 contact hours maximum.

(F) Developer of practice-related or instructional materials using alternative media such as video, audio, or software programs or applications to advance the professional skills of others (not for proprietary use), 15 contact hours maximum.

[(4) Home study courses, educational teleconferences, Internet-based courses, and video instruction; no maximum.]

[(A) These courses must have:]

[(i) Specified learning objectives;]

[(ii) A post-test; and]

[(iii) A certificate of completion or letter of verification.]

[(B) Educational teleconferences or Internet courses must reflect a pre-determined number of contact hours.]

(4) [(5)] Presentations by licensee.[:] Documentation [of this type of CE credit] shall include verification of presentation noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., 2 hour poster, 3 hour workshop). Any presentation may be counted only once.

(A) Professional presentation, e.g. in-services, workshops, institutes[: Any presentation counted only one time]. Hour for hour credit. 10 contact hours maximum.

(B) Community/Service organization presentation[: Any presentation counted once]. Hour for hour credit. 10 contact hours maximum.

(5) Supervision of students completing an accredited educational program or re-entry course.

(A) A licensee may earn a maximum of 10 contact hours for student supervision per renewal period.

(B) Fieldwork Supervision.

(i) Fieldwork Level 1: A licensee may earn .025 contact hours for each hour of supervision provided to a student.

(ii) Fieldwork Level 2:

(I) A licensee may earn 6 contact hours for 8 weeks of supervision provided to a student.

(II) A licensee may earn 9 contact hours for 12 weeks of supervision provided to a student.

(III) Licensees may divide fieldwork supervision hours based on the supervision provided.

(iii) Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

(C) Student Project Supervision.

(i) A licensee may earn .025 contact hours for each hour of supervision provided to a student completing a supervised project for the accredited educational program.

(ii) Documentation shall include the following:

(I) verification provided by the school to the supervisor with the name of the student, school and academic program, and dates of the semester for which the project was completed, and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(D) Supervision of a Re-Entry Student.

(i) A licensee may earn CE for the supervision of a student completing a re-entry course through an accredited college or university.

(ii) A licensee may earn 3 contact hours for 4 weeks of supervision.

(iii) A licensee may earn 6 contact hours for 8 weeks of supervision.

(iv) Licensees may divide fieldwork supervision hours based on the supervision provided.

(v) Documentation shall include verification provided by the school to the supervisor(s) with the name of the student, school and re-entry program, and dates of the supervision rotation or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.

[(6) Fieldwork Supervision: 10 hours maximum.]

[(A) A licensee may earn 2 contact hours for each Level 1 student supervised:]

[(i) 40 hours of Level 1 equals 1 hour of CE; or]

[(ii) 80 hours of Level 1 equals 2 hours of CE.]

[(B) A licensee may earn 8 contact hours for each Level 2 student supervised:]

[(i) 8 weeks equals 6 hours of CE; or]

[(ii) 12 weeks equals 8 hours of CE.]

[(C) A licensee may earn a maximum of 10 contact hours for fieldwork supervision per renewal period.]

[(D) Fieldwork supervision hours may be evenly divided between licensees, not to exceed two fieldwork educators per student.]

[(E) Fieldwork supervision must be completed before the licensee's renewal date.]

[(F) Documentation of this type of CE credit shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.]

(6) [(7)] Mentorship.[:]

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S. [Supervision hours as per §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant) are not eligible for continuing education hours.]

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met

by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee: A licensee may earn one contact hour ~~[of CE]~~ for each 3 hours spent in activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 ~~contact~~ ~~[CE]~~ hours.

(D) Participation as Mentor: A licensee may earn one contact hour ~~[of CE]~~ for each 5 hours spent in activities as a mentor up to a maximum of 10 ~~contact~~ ~~[CE]~~ hours.

(7) ~~[(8)]~~ Participation in volunteer activities related to occupational therapy including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT for the purpose of tangible outcomes such as official documents, publications, and official reports. Documentation ~~[of this type of CE credit]~~ shall include a copy of the actual publication or official document/report that ~~[which]~~ reflects the licensee's name. Maximum of 10 contact hours.

(8) ~~[(9)]~~ NBCOT Navigator[®]~~[TM]~~ Activities. ~~[:]~~ Licensees may earn CE ~~[up to 2 contact hours of CE]~~ for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour, ~~no maximum~~ ~~[-25 CE hours]~~. Documentation ~~[of this type of CE]~~ is a certificate of completion or letter of verification. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) AOTA Benchmark. Licensees may earn CE for the completion of the AOTA Benchmark. Documentation is a certificate of completion or letter of verification indicating credit awarded. No maximum.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, ~~though no more than 270,~~ days prior to expiration of the license.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, ~~[and]~~ certificates of completion, and letters of verification.

(e) Documentation must identify the licensee by name, and must include the date and title of the course, the name and signature of the authorized signer, and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed

on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (305) 305-6900



CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LI-CENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

40 TAC §374.1, §374.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, including pertaining to the repeal of occupational therapy facility registration.

The amendments, required to enact statutory changes to the OT Practice Act pursuant to SB 317, are proposed to remove from the chapter facilities related language concerning disciplinary actions and detrimental practice and to add language regarding the expunction of facility related violations.

Changes to §374.1 would remove from the section references to facilities in a provision concerning understanding and complying with the OT Practice Act and the OT Rules and a provision concerning the publishing of final disciplinary actions taken by the Board. In addition, the proposal would add to §374.1 that "The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021." The provision is being proposed pursuant to SB 317 and the addition to the OT Practice Act of §454.307, concerning record of disciplinary action and expungement.

The changes would also eliminate failure to register or renew a facility registration and practicing in an unregistered facility from the list of practices considered detrimental to the public health and welfare in §374.2 and from a schedule of sanctions in §374.1.

Other proposed rule changes regarding facility registration have also been submitted to the *Texas Register* for publication, including the proposed repeal of Chapter 376, concerning registration of facilities, and a proposed amendment to §362.1, concerning definitions.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy as the proposed rules concern the reduction of occupational therapy regulations and do not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rules.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rules concern the reduction of occupational therapy regulations and do not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new or expand an existing regulation; would repeal an existing regulation by removing language concerning facilities from the list of practices considered detrimental to the public health and welfare and from the schedule of sanctions; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability as the amendments would remove facility related language from provisions concerning understanding and complying with the OT Act and Rules and from provisions concerning detrimental practice and the schedule of sanctions; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rules because the rules do not impose a cost, and they do not increase costs to regulated persons, and because they are necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§374.1. Disciplinary Actions.

(a) The board, in accordance with the Administrative Procedure Act, may deny, revoke, suspend, or refuse to renew or issue a license, or may reprimand or impose probationary conditions, if the licensee or applicant for licensure has been found in violation of the rules or the Act. The board will adhere to procedures for such action as stated in the Act, §§454.301, 454.302, 454.303, and 454.304.

(b) The board recognizes four levels of disciplinary action for its licensees.

(1) Level I: Order and/or Letter of Reprimand or Other Appropriate Disciplinary Action (including but not limited to community service hours).

(2) Level II: Probation--The licensee may continue to practice while on probation. The board orders the probationary status which may include but is not limited to restrictions on practice and continued monitoring by the board during the specified time period.

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be reinstated upon the licensee successfully meeting all requirements.

(4) Level IV: Revocation--A determination that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon passage of 180 days, from the date the revocation order becomes final, the former licensee may petition the board for re-issuance of a license. The former licensee may be required to re-take the Examination.

(c) The board shall utilize the following schedule of sanctions in all disciplinary matters.

Figure: 40 TAC §374.1(c)

[Figure: 40 TAC §374.1(e)]

(d) The board shall consider the following factors in conjunction with the schedule of sanctions when determining the appropriate penalty/sanction in disciplinary matters:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(e) Licensees ~~who~~ [and facilities which] provide occupational therapy services are responsible for understanding and complying with Chapter 454 of the Occupations Code (the Occupational Therapy Practice Act), and the Texas Board of Occupational Therapy Examiners' rules.

(f) Final disciplinary actions taken by the board will be routinely published as to the names and offenses of the licensees ~~or facilities~~.

(g) A licensee who is ordered by the board to perform certain act(s) will be monitored by the board to ensure that the required act(s) are completed per the order of the board.

(h) The board may expunge any record of disciplinary action taken against a license holder before September 1, 2019, for practicing in a facility that failed to meet the registration requirements of §454.215 of the Act (relating to Occupational Therapy Facility Registration), as that section existed on January 1, 2019. The board may not expunge a record under this subsection after September 1, 2021.

(i) ~~[(h)]~~ A licensee or applicant is required to report to the board a felony of which he/she is convicted within 60 days after the conviction occurs.

§374.2. *Detrimental Practice.*

The Act, §454.301(a)(6) states "practiced occupational therapy in a manner detrimental to the public health and welfare," which is defined but not limited to the following:

(1) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;

(2) using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;

(3) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession;

(4) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;

(5) intentionally harassing, abusing, or intimidating a patient either physically or verbally;

(6) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage,

regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations;

(7) recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or other consideration from the third person;

(8) breaching the confidentiality of the patient/therapist relationship;

(9) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards;

(10) practicing occupational therapy after the expiration of a temporary, provisional, or regular license;

(11) violation of Chapter 373 of this title (relating to Supervision);

(12) advertising in a manner which is false, misleading, or deceptive;

~~[(13) failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt;]~~

~~[(14) practicing in an unregistered occupational therapy facility which is not exempt;]~~

(13) ~~[(15)]~~ failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care; or

(14) ~~[(16)]~~ failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §§376.1 - 376.10

The Texas Board of Occupational Therapy Examiners proposes the repeal of Chapter 376, concerning registration of occupational therapy facilities, pursuant to changes to the OT Practice Act, Occupations Code, Chapter 454, made by SB 317 from the 85th Regular Legislative Session, pertaining to the repeal of occupational therapy facility registration.

The repeal is proposed in order to discontinue the registration of occupational therapy facilities as mandated by changes to the OT Practice Act pursuant to SB 317 in the 85th Regular Legislative Session. The repeal would remove from the OT Rules requirements to register an occupational therapy facility with the Board and renew the registration annually and the requirement that occupational therapy practitioners may only practice in an occupational facility if that facility is registered or exempt from the registration requirement.

Other proposed amendments regarding facility registration have also been submitted to the *Texas Register* for publication, including proposed amendments to §362.1, concerning definitions, §374.1, concerning disciplinary actions, and §374.2, concerning detrimental practice.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the repeal would be in effect, there would be a probable \$361,420 loss of revenue to the state government beginning with Fiscal Year 2020. No fiscal implication to units of local government is anticipated. Mr. Maline anticipates a positive economic impact to owners of occupational therapy facilities as there would no longer be a cost of \$215 associated with registering and \$220 for renewing the registration of occupational therapy facilities.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy as the proposed repeal concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed repeal would be in effect, the public benefit anticipated as a result of enforcing the repeal would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed repeal.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed repeal concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed repeal would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed repeal's impact on government growth during the first five years the repeal would be in effect is as follows: would eliminate a governmental program by eliminating the Board's requirements concerning occupational therapy facility registration; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would decrease the fees paid to the agency by a prob-

able \$361,420 annually from occupational therapy facility registration and annual renewal; would not create a new or expand an existing regulation; would repeal an existing regulation by repealing the chapter concerning occupational therapy facility registration from the OT Rules; would eliminate the number of individuals subject to the rule's applicability in that owners of occupational therapy facilities would no longer be subject to a registration and annual renewal requirement and Board licensees who practice in occupational therapy facilities would no longer be required to practice in registered facilities or facilities that are exempt from the registration requirement; and would adversely affect the state's economy by a probable \$361,420 loss of annual revenue associated with the registration and annual renewal of occupational therapy facilities.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed repeal because the repeal does not impose a cost, and it does not increase costs to regulated persons, and because it is necessary to implement SB 317 from the 85th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed repeal may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed repeal is published in the *Texas Register*.

STATUTORY AUTHORITY

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

- §376.1. *Facility Definitions.*
- §376.2. *Requirement for Practice Setting of Licensees.*
- §376.3. *Requirements for Registration Application.*
- §376.4. *Requirements for Registered Facilities.*
- §376.5. *Exemptions to Registration.*
- §376.6. *Renewal of Registration.*
- §376.7. *Failure To Register.*
- §376.8. *Restoration of Registration.*
- §376.9. *Disciplinary Action.*
- §376.10. *Change in Occupational Therapy Facility Ownership.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900

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Figure: 40 TAC §374.1(c)

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
Impersonating another person holding an occupational therapy license or allowing another person to use his or her license	Sec. 454.301(a)(6) §374.2(1)	30-45 day license suspension +investigative costs / Cease and desist letter to the impersonator	45-90 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Using occupational therapy techniques or modalities for purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare	Sec. 454.301(a)(6) §374.2(2)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act, which could therefore result in harm to the public health and welfare or damage the reputation of the profession	Sec. 454.301(a)(6) §374.2(3)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report	Sec. 454.301(a)(6) §374.2(4)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally harassing, abusing, or	Sec. 454.301(a)(6) §374.2(5)	30-60 hours community service	30-60 day license suspension	Revocation or Surrender of license	Alternative disciplinary decisions or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
intimidating a patient either physically or verbally		+investigative costs	with restricted practice +investigative costs; referral for criminal investigative entity	(until conditions are met or indefinitely)	pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for receiving or soliciting patients or patronage, regardless of source of reimbursement, unless said business arrangement or payments practice is acceptable under the Texas Health and Safety Code, §§161.091 - 161.094, the Social Security Act, §1128B, 42 United States Code 1320a-7b, or the Social Security Act, §1877, 42 United States Code 1395nn or its regulations	Sec. 454.301(a)(6) §374.2(6)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Recommending or prescribing therapeutic devices or modalities sold by a third person for the purpose or with the result of receiving a fee or	Sec. 454.301(a)(6) §374.2(7)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
other consideration from the third person					development.
Breaching the confidentiality of the patient/therapist relationship	Sec. 454.301(a)(6) §374.2(8)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by the TBOTE Code of Ethics, §374.4 of this title (relating to Code of Ethics), or other occupational therapy standards	Sec. 454.301(a)(6) §374.2(9)	30-60 hours community service and additional course in ethics +investigative costs	30-60 day license suspension and additional course in ethics +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Practicing occupational therapy after the expiration of a temporary, provisional, or regular license	Sec. 454.301(a)(6) §374.2(10)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Violation of Chapter 373 of this title (relating to Supervision)	Sec. 454.301(a)(6) §374.2(11)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Advertising in a manner which is false, misleading, or deceptive / Advertised in a	Sec. 454.301(a)(6) §374.2(12) / Sec. 454.301(7)	Letter to cease and desist; if licensed, 30-60 hours community	Letter to cease and desist; if licensed, 30-60 day license	Revocation or Surrender of license (until conditions	Alternative disciplinary decisions or pursuing other courses of action

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
manner that in any way tends to deceive or defraud the public		service +investigative costs	suspension +investigative costs	are met or indefinitely)	may depend on the nature of the situation, repeat of violation, or development.
[Failing to register an occupational therapy facility which is not exempt or failing to renew the registration of an occupational therapy facility which is not exempt]	[Sec. 454.301(a)(6) §374.2(13)]	[Letter to cease and desist; if licensed, letter of reprimand to the TIC and facility +investigative costs]	[Letter to cease and desist; if licensed, 30-60 day suspension for TIC and facility +investigative costs]	[Revocation or Surrender of license (until conditions are met or indefinitely)]	[Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.]
[Practicing in an unregistered occupational therapy facility which is not exempt]	[Sec. 454.301(a)(6) §374.2(14)]	[Letter of reprimand to the TIC, OTs, OTAs, and facility and/or 30-60 hours community service +investigative costs]	[30-60 day license suspension for the TIC, OTs, and OTAs +investigative costs]	[Revocation or Surrender of license (until conditions are met or indefinitely)]	[Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.]
Failing to give sufficient prior written notice of resignation of employment (or termination of contract) resulting in loss or delay of patient treatment for those patients/clients under the licensee's care	Sec. 454.301(a)(6) §374.2(15)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failing to maintain the confidentiality of all verbal, written, electronic, augmentative, and nonverbal communication, including compliance with HIPAA regulations	Sec. 454.301(a)(6) §374.2(16)	30-60 hours community service +investigative costs	30-60 day license suspension +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Failed CE Audit	§367.3	30-60 hours community service and completion of CE hours	30-60 day license suspension and completion of	Revocation or Surrender of license (until conditions	Alternative disciplinary decisions or pursuing other courses of action

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
		+investigative costs	CE hours +investigative costs	are met or indefinitely)	may depend on the nature of the situation, repeat of violation, or development.
Failed to properly renew license	Sec. 454.252 §367.1(b) §370.1	30-60 hours community service and completion of CE hours +investigative costs	30-60 day license suspension and completion of CE hours +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence	Sec. 454.301(1)	30-90 day license suspension with restricted practice +investigative costs	6-12 month license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant	Sec. 454.301(2)	Restricted practice	30-60 day license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Obtained or attempted to obtain a license by	Sec. 454.301(3)	Letter of cease and desist for attempter / 30-	60-90 day license suspension	Revocation or Surrender of license	Alternative disciplinary decisions or

Schedule of Sanctions

Disciplinary Violations	OT Act/Rule	Minimum Discipline	Intermediate Discipline	Maximum Discipline	Remarks
fraud or deception		60 day licensee suspension +investigative costs	with restricted practice +investigative costs; referral for criminal investigative entity	(until conditions are met or indefinitely)	pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant	Sec. 454.301(4)	30-60 hours community service +investigative costs	30-90 day license suspension with restricted practice +investigative costs; referral for criminal investigative entity	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Been found mentally incompetent by a court	Sec. 454.301(5)	30-60 day license suspension with provisional restricted practice +investigative costs	6-12 month license suspension with provisional restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.
Had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation	Sec. 454.301(8)	30-60 hours community service +investigative costs	30-60 day license suspension with restricted practice +investigative costs	Revocation or Surrender of license (until conditions are met or indefinitely)	Alternative disciplinary decisions or pursuing other courses of action may depend on the nature of the situation, repeat of violation, or development.